UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MICHIGAN BELL TELEPHONE COMPANY Case 07–CA–150005

and

LOCAL 4034, COMMUNICATIONS WORKERS
OF AMERICA (CWA), AFL-CIO

Colleen J. Carol, Esq., for the General Counsel.
Stephen J. Sferra, Esq. (Littler Mendelson, P.C.),
Cleveland, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on October 6, 2015. CWA Local 4034 filed the charge on April 13, 2015. The General Counsel issued the initial complaint on July 28, 2015, and an amended complaint on September 29, 2015.

The issue in this case is whether Respondent, Michigan Bell Telephone Company, violated Section 8(a)(5) and (1) by refusing the Union's request that it identify the employee who informed manager Andrew Maki on the morning of Saturday, January 10, 2015 that employees would take part in a "family day" that evening. Family day is code for a refusal to work overtime.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Michigan Bell Telephone Co. provides communications services, including telephone, internet and television services in the area around Grand Rapids, Michigan. Respondent annually derives gross revenues in excess of $100,000. It provides services in excess of $5,000

outside the State of Michigan. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Respondent, Michigan Bell Telephone has a collective bargaining agreement with District 4 of the Communications Workers of America (CWA) which runs from April 12, 2015 to April 11, 2018. The parties had a prior contract that ran from April 2012 to April 2015. CWA Local 4304 enforces the contract by such means as representing bargaining unit members in grievances and arbitrations.

Both the current and prior contracts contain a "No-strike" clause, Article 5. Both also include an Appendix F applicable to premises technicians. These are employees who install and service U-verse, AT&T's television, telephone and internet services in the homes or offices of customers (as opposed to "core employees," who only work on traditional land line telephone service). Section 5.08 of Appendix F in the 2012-15 contract provided that employees may be required to work up to 17 hours per week of overtime, depending on the needs of Respondent's business. However, this limitation does not apply to emergencies. The contract does not define emergency or indicate who determines that an emergency exists. The 2015-18 contract has the same provision except that it specifies that employees may be required to work up to 14 hours per week of overtime, rather than 17.

On January 4, 2015, Respondent's Area Manager in Grand Rapids, Mike Ten Harmsel, met with unit employees. He told them that on any given day they would have to remain at work until they were advised by management that there was no work to be performed. Regardless of when their scheduled shift ended, employees were not to return to the Grand Rapids garage until "cleared" by management or told by a supervisor that there was no work to be performed.

The next evening the Union had a membership meeting. About 60 unit employees attended the meeting, including about 40 premises technicians. Some of the premises technicians were angry about Ten Harmsel's announcement on the previous day. One or more suggested that employees have a "family night." This is code for a protest against management enforcing a program of mandatory overtime without prior notice. The protest would take the form of a refusal to work overtime.

Union employees in Michigan and Indiana had engaged in such family nights in 2012 and on September 19, 2014. Grand Rapids employees participated in the 2012 family night and possibly the 2014 family night. Respondent disciplined a number of Grand Rapids employees on both occasions.

Saturday morning, January 10, 2015

On the morning of Saturday, January 10, 2015, Andrew Maki, a U-verse manager at the Grand Rapids garage held a short meeting for the 40-50 employees who reported to work that day on the early shift. Another dozen or more employees were scheduled to work starting at

about 10:30. On Saturday, the employees were scheduled to do repair, rather than installation, work. After the meeting, Maki returned to the supervisors' office, which is locked from the outside.

Shortly after Maki returned to his office, a unit employee knocked at the door. Maki opened the door and ushered the employee into the office. This employee told Maki that a "family night" might occur that evening. This employee did not request that his identity be kept confidential, nor did he express any fear of retaliation if his identity was divulged. Maki advised Mike Ten Harmsel, his boss, of the substance of the conversation.

Ten Harmsel directed 3 supervisors to meet unit employees as they returned to the garage at the end of their shift. The supervisors asked employees a number of questions including who told them that it was acceptable to return to garage and whether their decision to do so was individual activity, G.C. Exh. 10, p. 2.[1] 19 unit employees returned to the garage at the end of their scheduled shift without being "cleared" by management. Supervisors directed them to return to work and 12-14 did so; the other 5-7 refused.

Brian Hooker, the administrative assistant to the president of Local 4034, learned on January 10 that Andrew Maki had been "tipped off" that day in advance that a family night might occur. On Monday, January 12, Hooker called Maki and asked if this was true. Maki confirmed that he had been told of the possible family night by an unit employee. Hooker asked if Maki had promised the employee confidentiality as to his or her identity. Maki responded that he had not done so. Hooker asked Maki for the name of his informant; Maki said he could not divulge the name without the individual's permission. There is no evidence that Maki or any other agent of Respondent asked the employee/informant if Respondent could identify him or her to the Union.

Hooker followed up his telephone conversation by sending Maki an email on January 12:[2]

> Andrew:
> Mon, Jan 12, 2015 at 10:38 AM
> The below request is in reference to a telephone call this morning between you and I regarding the events on 1/10/14 at the Eastern Uverse garage and your knowledge of a purported job action that was thought by Grand Rapids Uverse management to be orchestrated by Local 4034. In our conversation this morning, you confirmed that it was you who received information from a union member, on Saturday, 1/10/14 at about 8:30 a.m., which you claim indicated that an overtime work-stoppage job action was to take place on the above-referenced date. You further told me in our telephone conversation that you had not promised confidentiality to the employee who indicated to you that Local 4034 was planning a job action that date.
> For purposes of clarity, the work-group has referred this matter in grievance form to the Local and therefore you are reminded that you are prohibited by agreement in the

[1] The Regional Director dismissed a charge filed by the Union alleging that the employees who were disciplined as a result of their conduct on January 10 were engaged in protected concerted activity.

[2] The email mistakenly refers to January 10, 2014 several times rather than January 10, 2015.

contract with discussion of the matter with any member of the work-group except Union representatives. Because this is a legal and contractual request, and the information is already in your possession, the Union deems it reasonable to receive this information by close of business today.

Relevant Data Request:

In order to make a determination as to whether a valid grievance exists, or if an existing grievance should be elevated to the next step and/or to bargain terms and conditions of employment on behalf of our members, the Union requires the information listed below. Contractual time limits for proper filing and escalation of grievances make it necessary that we receive this information as soon as possible. Please contact me ASAP to arrange my receipt of the below data. If there are any questions as to format and/or, clarification on our request for any of this data, please contact me at the email address provided below. If for any reason the data can not, or will not, be provided, please so state in an email reply to this request. This is a continuing request; the company is requested to supplement its response if further responsive information develops. Please contact the undersigned with any questions. Thank you for your prompt attention to this very important matter.

1. Please provide in writing the name of the employee who informed you that a job-action was to take place Saturday, 1/10/14.

1. Please provide in writing a specific description of the information you received.

2. Please provide in writing a list of the people to whom you disseminated the information, including the date, time and method of notification.

2. The Union reserves all rights to request such information as it deems necessary to represent its members…

Between February 17 and 20, 2015, Respondent suspended 4 current employees for 1 day for insubordination on January 10. 1 other received a 3-day suspension. 2 other employees may have also been disciplined but are no longer employed by Respondent.

Hooker made another information request on February 20, which reiterated his January 12 request for information concerning the January 10 informant. Hooker also asked for other information, including the identities of employees disciplined as a result of their conduct on January 10, the nature of the discipline and the reasons for the discipline. He also asked for the names of management employees consulted in imposing discipline.

On March 3, except for the request regarding the January 10 informant, Mike Ten Harmsel provided the information requested by the Union on February 20. In response to these requests he identified 5 unit employees who had received 1-3 day suspension for what he termed insubordination on the evening January 10. He declined to provide the identity of the informant, on the grounds that the information was irrelevant because the Respondent did not consider what occurred on January 10 to be a job action. Ten Harmsel stated that the 5 employees were disciplined for insubordination.

On March 4, the Union responded by stating that the information provided to Andrew Maki on January 10 and the identity of the informant was relevant to the grievance.

The Union reiterated its request for the identity of the January 10 informant on subsequent occasions. On July 21, for the first time, Respondent, by Ten Harmsel, specifically raised the company's interest in maintaining the confidentiality of the employee's identity.

> This email provides the Company's supplemental response to your prior request for information regarding "the name of the employee who informed [the Company] that a job- action was to take place Saturday, 1/10/15." The Company previously declined to provide the name of the individual and did not think the name was relevant because the Company did not consider the events on January 10, 2015, to be a job action.
>
> In addition, the Company is interested in maintaining the confidentiality of the employee's name in question. Specifically, the Company has legitimate concerns that the employee would be subject to possible harassment and/or retaliation by Local Union officials or members if his name is disclosed. These concerns are heightened by the fact that the Local has not explained the relevance of its request, or why the individual's actual name is necessary for the Local to determine if a valid grievance exists. The Company hereby offers to bargain a reasonable accommodation that will protect each side's interests. To that end, please provide an explanation as to why you believe the individual's name is relevant, and, specifically, why it is necessary for the Local to know the employee's actual name. Based on the reason provided, the Company may be able to provide alternative information that satisfies the Local's needs. Secondly, please confirm whether or not the Local is willing to provide written assurances that the employee in question will not be subject to any type of retaliation by the Local or its members, including assurances that the Local or CWA International will not file internal disciplinary charges against the employee if his name is disclosed.

The Union responded by questioning the legitimacy of these expressed concerns.

> The relevance of the above-requested information is that the Union is investigating the Company's alleged violation of article 5.02 and other potential contract violations. Notwithstanding the Company's current revisionist history that it did not contemplate the events of January 10, 2015 as a job action, several Company agents went on record as saying that it was viewed as such, including on more than one occasion yourself. That is the relevance of our request.
>
> As to the Company's second concern, it is well established under law and under Company policy that such behavior is prohibited and Locals which engage in such behavior are in danger of losing the protection of the Act. The Union rejects root and branch the Company's putative "legitimate concerns" and asks that, if such exist, the Company provide further information regarding such instances, including steps that the Company took to remediate such behavior. If the Company can not or will not provide specific examples in which such harassment and retaliation did take place as regards CWA Local 4034, then the Union must insist on receiving its information.

> As to the Company's concern regarding the Union's internal disciplinary processes, the Union does not feel it necessary to review, discuss or negotiate any of its internal processes with any employer.

Ten Harmsel responded to this email, as follows:

> This responds to the email you sent me yesterday. The operative events occurred on January 10, 2015, which is outside the contractual time period for the Local to file a grievance relating to the Company's "alleged violation of article 5.02 and other potential contract violations." Moreover, the mere assertion that the Local is "investigating" alleged violations of Article 5.02 or "other contract violations" does not establish why the name of the individual at issue is relevant or necessary to the union's investigation. The Company is willing to discuss providing other relevant information that may be necessary to the Union. However, we are simply trying to understand why you need the person's actual name, and your conclusory statement that you "need it because you need it" does not establish relevance. This is particularly so in this case based on the Company's expressed concerns that the individual may be subjected to harassment or retaliation by the Local or fellow Union members.
>
> Finally, I will interpret your response to mean that the Local is not willing to provide written assurances that the employee in question will not be subject to any type of retaliation by the Local or its members, including disciplinary charges. If l have misunderstood your position, please let me know.

Analysis

General Principles

Section 8(a)(5) provides that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of its employees. An employer's duty to bargain includes a duty to provide information needed by the bargaining representative in contract negotiations and administration. Information pertaining to bargaining unit employees is presumptively relevant to a union's representational duties. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152-53 (1956); *Southern California Gas Co.,* 344 NLRB 231, 235 (2005).

Even if requested information is relevant, in certain instances a party may assert a confidentiality to defense to the demand for information, *Detroit Newspaper Agency,* 317 NLRB 1071 (1995).

Respondent has two defenses to the allegation that it violated the Act in refusing to provide the name of the January 10 informant and related information; 1) relevance of the request and 2) confidentiality concerns. I conclude that its confidentiality defense has absolutely no merit. There is no evidence that the January 10 informant requested that his identity be kept secret. Andrew Maki did not promise confidentiality when he spoke to the employee.

In responding to Brian Hooker on January 12, Maki told Hooker that he could not identify the informant without checking with the informant and Ten Harmsel.[3] There is no evidence that any manager asked the informant if Respondent could identify him or her to the Union. Thus, its claims to confidentiality are purely speculative. It could well be that the informant does not have an objection to such disclosure. At least half the premises techs did not return to the garage on January 10. It may be that some were opposed to the conduct of those that did. District union officials were concerned that any job action on January 10, might compromise its settlement negotiations with Respondent regarding discipline imposed as a result of the September 19 job action, Tr. 33. It could well be that some premises technicians had similar concerns and might not be shy about making them known.[4]

Generally, the Board regards that any information request regarding bargaining unit employees is presumptively relevant, *Curtis Wright Corp., Wright Aeronautical Div.* 145 NLRB 152, 156-7 (1963). However, by relevant, the Board means that the information is relevant to the Union's duties as the unit employees' collective bargaining representative. In this case, the record establishes that the identity of the informant, what he or she said to management and the dissemination of the information is irrelevant to these duties. The presumption of relevance is a rebuttable presumption, *Armstrong World Industries, Inc.,* 254 NLRB 1239, 1245 (1981). The record in this case rebuts that presumption.

The identity of a bargaining unit informant may be relevant in some cases, e.g. *Alcan Rolled Products,* 358 NLRB No. 11 (2012),[5] in which an employee may have been disciplined in whole or in part on the basis of employee statements.

However, in this case, the identity of the informant, what he told Maki and the extent of the message's dissemination has no relevance to the Union's duties in administering its collective bargaining agreement with Respondent. The identity of the informant does not have any relevance to the discipline of the 5-7 bargaining unit members. These employees were not disciplined as the result of any information that the informant gave to Andrew Maki. They were told to return to work and refused to do so. The identity of the unit employee who alerted management to the possibility that employees might return to the garage at the end of their scheduled shift has no relevance to whether these employees were disciplined for just cause.

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[3] Confidentiality claims must be timely raised, *Gas Spring Co.,* 296 NLRB 84, 99 (1989). Although Respondent did not specifically claim confidentiality until July 21, I find that Maki's hesitation to divulge the identity of the informant on January 12 satisfies this requirement.

[4] I give no weight to Respondent evidence regarding Brian Hooker's allegedly boorish behavior towards Respondent's managers. There is no reason to suspect from this evidence that Hooker would bully or harass a bargaining unit member. On the other hand, Hooker's email of January 12, Exh. R-6, does suggest that if the Union received the requested information, it would harbor some animosity towards the informant. Hooker stated, "But, until we get answers I want no one going off the deep-end on anyone; management would love to kill one of us for COBC [Code of Business Conduct] over one of their (maybe) pets/rats." This certainly suggests that the Union is seeking the identity of the informant to determine who may be a company pet/rat, which I view as a completely illegitimate use of the Board's processes in this context, where the identity of the informant has no relevance to any grievance the Union did file or could have filed.

[5] Although this decision was rendered by a Board which was composed of two members who were not validly appointed, I rely on the rationale of the Judge's decision, which is sound.

Additionally, there is no nexus between the identity of the informant and the contrasting views of the Union and management as to the company's authority to require employees to work overtime, with or without advance notice.

At Tr. 49-50, the General Counsel asked Brian Hooker why the information he sought was relevant. He answered as follows:

> For several reasons. My present and primary concern, as related to me, was that had the events of Tuesday evening, January 5th at the general membership meeting, had we inadvertently, we being the Local Union, communicated to the membership that a job action needed to take place or should take place? So we wanted to interview the person to see why did you think that there was a family night coming out? We take very seriously our contractual duties under Article 5, and -- which is another reason that we needed to know that name, because we need to explain to the membership that during the times that we are not bargaining, we do not do work stoppages. We feel that that is part of our duty under the contract, as the Company also has duties under that same article.
>
> Another reason that we needed it was because discipline had resulted from the information that this person had provided to the Company. Under the Act, we have a DFR, a duty of fair representation, and it was necessary to get all the information possible together about the events that surrounded that day so that I could adequately represent the members or direct the representation of the members at the first-step grievance meeting.

If the Union wanted to know why 19 employees returned to the Grand Rapids garage when the scheduled shift ended, it should ask those employees, not the informant, who assumedly was not one of the 19. What the informant thought is completely irrelevant to the question of why 19 unit employees thought they were justified in returning to the garage. Also, the Union does not need the name of the informant in order to explain to the Union's membership that when the Union is not bargaining that, "we do not do work stoppages."

Further, I see no relationship to the Union's grievances on behalf of the disciplined employees and the identity of the informant. While it is true that there would not have been 3 supervisors at the garage to meet the "early returnees," those disciplined were those who, unlike 12-14 other unit employees, disobeyed a direct order to return to work

In sum, I find that the Union's information request is not relevant to the Union's duties as the collective bargaining representative of unit employees. I therefore dismiss the complaint.[6]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The complaint is dismissed.

Dated, Washington, D.C., December 3, 2015.

Arthur J. Amchan
Administrative Law Judge

[6] I also find that Respondent met whatever obligation it had to bargain an accommodation with the Union regarding the requested information.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.